

U.S. Department of Justice



*United States Attorney
Southern District of New York*

86 Chambers Street
New York, New York 10007

January 27, 2021

VIA ECF

The Honorable Lorna G. Schofield
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

The application is GRANTED. Defendant shall file its pre-motion letter under seal and with the redactions specified at Docket No. 109. The Clerk of Court is respectfully directed to close the entries at Docket Nos. 104 and 108, and to place the entry at Docket No. 104 under seal.

SO ORDERED

Dated: January 28, 2021
New York, New York

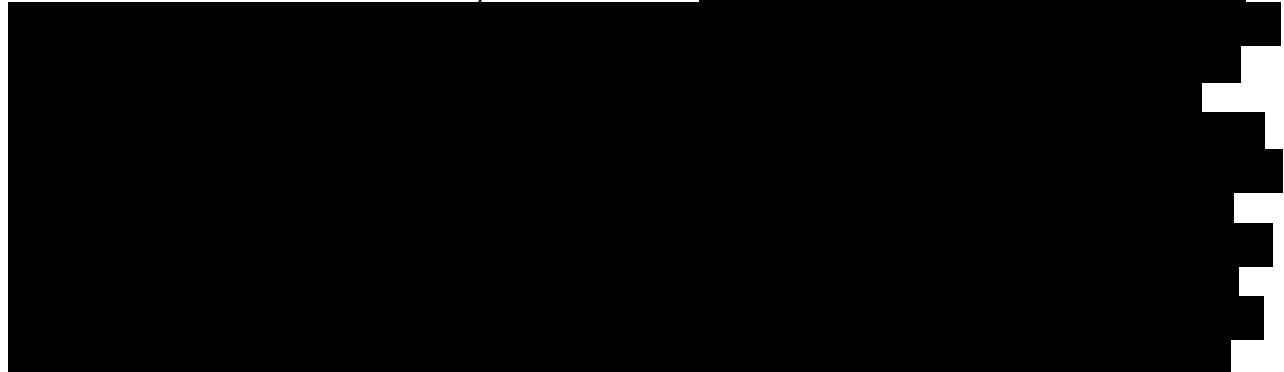
LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Re: *360 Mortgage Group LLC v. Fortress Investment Group LLC*,
No. 19 Civ. 8760 (LGS)

Dear Judge Schofield:

This Office represents non-party U.S. Department of Housing and Urban Development (“HUD”) in connection with the above-referenced matter. Pursuant to this Court’s Order, *see* Dkt. No. 106, we write to advise the Court of whether Defendant’s pre-motion letter, Dkt. No. 105, contains confidential information requiring submission in redacted form and under seal. HUD has no objection to most of the information filed under seal by Defendant being made publicly available. HUD, however, respectfully informs the Court that portions of two sentences contain confidential information. We respectfully request that this limited information remain under seal. Defendant consents to this request. Plaintiff consents to this request for purposes of this filing without waiving its right to challenge at trial the information HUD is designating as confidential in this letter. For the Court’s benefit, we are submitting under seal another version of Defendant’s letter, with the identified confidential HUD information highlighted in green.

The highlighted green section on page 1 contains information that HUD maintains as confidential. Because the reasoning for the seal request would itself reveal confidential information and does not bear on this dispute between two private parties, we are submitting the following information in redacted form and *ex parte* under seal.



[REDACTED] Thus, HUD respectfully requests that this information remain under seal.

The highlighted green section on page 2 also contains confidential HUD information. Although the language used by Defendant is ambiguous, Defendant appears in part to be referencing internal discussions within Ginnie Mae concerning Ginnie Mae's determination to terminate Plaintiff's issuer status.¹ HUD and Ginnie Mae customarily maintain such deliberations as confidential. Further, fulsome and candid deliberations within Ginnie Mae concerning the performance of Ginnie Mae's duties are critical to the discharge of the Ginnie Mae's mission. Public disclosure of this kind of information may discourage Ginnie Mae and HUD employees from speaking candidly in advance of potential decisions. HUD thus respectfully requests that the portion of this sentence containing such information remain under seal.

Last, HUD reserves the right to object to either party's use of information in a manner inconsistent with the limitations issued by HUD under its so-called *Touhy* regulations, *see* 24 CFR Subpart C *et. seq.*, including certain limitations imposed regarding the permissible scope of Mr. Mondonedo's testimony. Neither party has challenged those limits imposed by HUD.

We thank the Court for its consideration of this matter.

Respectfully,

AUDREY STRAUSS
United States Attorney

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cc: Counsel of Record (via ECF)

¹ We note that HUD's positions on the confidentiality of the information in Defendant's letter should not be viewed as any endorsement of Defendant's characterizations of the relevant law or facts. At the upcoming conference in this matter, HUD intends to request permission to inform the Court at a later date (after reviewing the party's opening briefs and the issues raised therein) of whether the Government believes the Court may benefit from a Statement of Interest submitted by HUD in connection with the parties' anticipated summary judgment briefing.